

1 AN ACT

2 RELATING TO TAXATION; ~~REPEALING THE GROSS RECEIPTS DEDUCTION~~
3 ~~FROM RECEIPTS FROM CERTAIN SALES; PROVIDING A CREDIT AGAINST~~
4 ~~THE STATE SHARE OF GROSS RECEIPTS TAX ON RECEIPTS FROM~~
5 ~~CERTAIN SALES; ALTERING CERTAIN DISTRIBUTIONS TO~~
6 ~~MUNICIPALITIES AND COUNTIES; INCREASING THE LOW-INCOME~~
7 ~~COMPREHENSIVE TAX REBATE; INCREASING THE GROSS RECEIPTS AND~~
8 COMPENSATING TAXES; DISTRIBUTING ADDITIONAL REVENUE TO THE
9 GENERAL FUND; CLARIFYING NEXUS REGARDING CERTAIN COMPENSATING
10 TAX TRANSACTIONS; PROVIDING FOR STATE AND LOCAL TAXES TO BE
11 INCLUDED IN TAXABLE INCOME FOR STATE INCOME TAX PURPOSES.

12
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

14 Section 1. Section 4-61-2 NMSA 1978 (being Laws 1982,
15 Chapter 44, Section 2, as amended) is amended to read:

16 "4-61-2. DEFINITIONS.--As used in the Small Counties
17 Assistance Act:

18 A. "adjustment factor" means a fraction, the
19 numerator of which is the net taxable value of the state for
20 the property tax year prior to the year in which the amount
21 of small counties assistance is being determined and the
22 denominator of which is the net taxable value for property
23 tax year 2002; the adjustment factor shall be calculated
24 without reference to assessed value determined pursuant to
25 the Oil and Gas Ad Valorem Production Tax Act, assessed value

1 determined pursuant to the Oil and Gas Production Equipment
2 Ad Valorem Tax Act or taxable value determined pursuant to
3 the Copper Production Ad Valorem Tax Act;

4 B. "ceiling valuation" means:

5 (1) for the 2002 property tax year, one
6 billion four hundred million dollars (\$1,400,000,000); and

7 (2) for each subsequent property tax year,
8 an amount equal to the product obtained by multiplying one
9 billion four hundred million dollars (\$1,400,000,000) by the
10 adjustment factor for the year;

11 C. "demographer" means the bureau of business and
12 economic research at the university of New Mexico;

13 D. "inflation factor" means a fraction whose
14 numerator is the annual implicit price deflator index for
15 state and local government purchases of goods and services,
16 as published in the United States department of commerce
17 monthly publication entitled "Survey of Current Business" or
18 any successor publication prepared by an agency of the United
19 States and adopted by the department of finance and
20 administration, for the calendar year one year prior to the
21 year in which the distribution is to be made and whose
22 denominator is the annual index for calendar year 2004;
23 provided that, if the inflation factor is calculated to have
24 a value less than one, it shall be deemed to have a value of
25 one;

1 E. "population" means the official population
2 shown by the most recent federal decennial census or, if
3 there is a change in boundaries after the date of the census,
4 "population" for each affected unit shall be the most current
5 estimated population for that unit provided in writing by the
6 demographer; provided that after five years from the first
7 day of the calendar year of the most recent federal decennial
8 census, that census shall not be used, and "population" for
9 the period from that date until the date when the next
10 following official final decennial census population data are
11 available shall be the most current estimated population
12 provided in writing by the demographer;

13 F. "qualifying county" means a county that has:

14 (1) for the property tax year in which any
15 distribution under the Small Counties Assistance Act is made
16 to the county, imposed a property tax rate for general county
17 purposes pursuant to Paragraph (1) of Subsection B of Section
18 7-37-7 NMSA 1978 as limited by Section 7-37-7.1 NMSA 1978 of
19 at least eight dollars eighty-five cents (\$8.85) per one
20 thousand dollars (\$1,000) of net taxable value;

21 (2) by July 1 of the property tax year in
22 which any distribution under the Small Counties Assistance
23 Act is made to the county, received a written certification
24 from the director of the property tax division of the
25 taxation and revenue department that the county assessor of

1 that county has implemented an acceptable program of
2 maintaining current and correct property values for property
3 taxation purposes as required by Section 7-36-16 NMSA 1978 or
4 has submitted to the director an acceptable plan for the
5 implementation of such a program;

6 (3) on July 1 of the year in which any
7 distribution under the Small Counties Assistance Act is made
8 to the county, a population of not more than forty-eight
9 thousand;

10 (4) imposed county gross receipts tax
11 increments authorized pursuant to Section 7-20E-9 NMSA 1978
12 totaling at least three-eighths percent and has those
13 increments in effect on July 1 of the year in which a
14 distribution is made, provided that this paragraph does not
15 apply to a county if the county's valuation for property
16 taxation purposes does not exceed the product of two hundred
17 thirty million dollars (\$230,000,000) multiplied by the
18 adjustment factor for the year; and

19 (5) a total valuation for the property tax
20 year preceding the year in which a distribution pursuant to
21 the Small Counties Assistance Act for that county is to be
22 made that is no greater than the ceiling valuation for that
23 property tax year;

24 G. "tax rate factor" means a fraction, the
25 numerator of which is the average rate imposed in Section

1 7-9-7 NMSA 1978 for the fiscal year one year prior to the
2 fiscal year in which the distribution is to be made and the
3 denominator of which is five percent; and

4 H. "total valuation" means the sum for a
5 jurisdiction for a property tax year of the net taxable value
6 determined pursuant to the Property Tax Code, the assessed
7 value determined pursuant to the Oil and Gas Ad Valorem
8 Production Tax Act, the assessed value determined pursuant to
9 the Oil and Gas Production Equipment Ad Valorem Tax Act and
10 the taxable value determined pursuant to the Copper
11 Production Ad Valorem Tax Act."

12 Section 2. Section 4-61-3 NMSA 1978 (being Laws 1982,
13 Chapter 44, Section 3, as amended) is amended to read:

14 "4-61-3. SMALL COUNTIES ASSISTANCE FUND--
15 DISTRIBUTION.--

16 A. The "small counties assistance fund" is created
17 within the state treasury.

18 B. On or before September 1, 2003 and on or before
19 September 1 of each subsequent year, the demographer shall
20 certify in writing to the department of finance and
21 administration the population of the state and of each county
22 as of June 30 of the year.

23 C. On or before September 15, 2003 and on or
24 before September 15 of each subsequent year, the secretary of
25 finance and administration shall certify to the state

1 treasurer with respect to each qualifying county:

2 (1) its population as certified by the
3 demographer;

4 (2) its total valuation for the preceding
5 property tax year; and

6 (3) the distribution amount calculated for
7 it.

8 D. The distribution amount for each qualifying
9 county shall be determined for 2003 and each subsequent year
10 in accordance with the following table; provided that the
11 bracket amounts in the first two columns of the table shall
12 be adjusted annually after 2003 by the adjustment factor.
13 The bracket amounts in the last column shall be adjusted
14 annually after 2005 by the inflation factor and, in 2011 and
15 subsequent years, shall be adjusted by the tax rate factor.
16 The department of finance and administration may round the
17 results of the adjustments made pursuant to this subsection
18 to the nearest one thousand dollars (\$1,000).

19 If the county's total valuation for the preceding
20 property tax year is:

21	at least:	but less	and the county	then the distribution
22		than:	population is:	amount is:
23	\$ 0	\$100,000,000	under 1,000	\$450,000
24	\$ 0	\$100,000,000	at least 1,000	
25			but under 4,000	\$325,000

1	\$	0	\$100,000,000	at least	4,000	\$250,000
2		\$100,000,000	\$230,000,000	under	12,000	\$175,000
3		\$100,000,000	\$230,000,000	at least	12,000	\$125,000
4		\$230,000,000	\$1,400,000,000	under	48,000	\$ 75,000.

5 E. If the balance in the small counties assistance
6 fund as of the preceding August 31 exceeds the sum of the
7 distributions to be made to qualifying counties pursuant to
8 the provisions of Subsection D of this section, the department
9 of finance and administration shall increase the distribution
10 amount for each county receiving a distribution amount
11 pursuant to the provisions of Subsection D of this section by:

12 (1) thirty-five thousand dollars (\$35,000)
13 if the county has imposed and has in effect on July 1 of the
14 year in which the distribution is to be made a county
15 correctional facility gross receipts tax at a rate of at least
16 one-eighth percent;

17 (2) fifteen thousand dollars (\$15,000) if
18 the county has imposed and has in effect on July 1 of the year
19 in which the distribution is to be made a county gross
20 receipts tax increment of one-sixteenth percent; or

21 (3) fifty thousand dollars (\$50,000) if the
22 county has met the requirements of Paragraphs (1) and (2) of
23 this subsection.

24 F. If the balance in the small counties assistance
25 fund as of the preceding August 31 is less than the sum of the

1 distributions determined pursuant to Subsection D of this
2 section plus the distribution increases authorized pursuant to
3 Subsection E of this section, the distribution increases
4 pursuant to Subsection E of this section shall be
5 proportionately reduced.

6 G. If the balance in the small counties assistance
7 fund as of the preceding August 31 is less than the sum of the
8 distributions to be made to qualifying counties, the
9 department of finance and administration shall reduce each
10 qualifying county's calculated distribution by a percentage
11 computed by dividing the amount by which the fund is
12 insufficient by the sum of all the calculated distributions
13 and shall certify the reduced amounts as the qualifying
14 counties' distributions.

15 H. Any interest accruing from the temporary
16 investment of the small counties assistance fund shall be
17 credited to the general fund.

18 I. On or before September 30, 2003 and on or
19 before September 30 of each subsequent year, the state
20 treasurer shall distribute to each county for whom a
21 distribution has been certified for that year the amount
22 certified for that county for that year. If the balance in
23 the fund as of the preceding August 31 exceeds the sum of
24 certified amounts distributed, the difference shall revert to
25 the general fund.

1 J. If any date specified in Subsection B, C or I
2 of this section falls on a Saturday, Sunday or legal holiday,
3 any action required to be performed as provided in those
4 subsections is timely if performed on the next day that is not
5 a Saturday, Sunday or legal holiday."

6 Section 3. ~~A new section of the Tax Administration Act~~
7 ~~is enacted to read:~~

8 "~~DISTRIBUTION ADJUSTMENT--TAX ADMINISTRATION SUSPENSE~~
9 ~~FUND--CREDIT FOR RECEIPTS OF RETAIL FOOD STORES.--~~

10 ~~Distributions from the tax administration suspense fund to the~~
11 ~~general fund of net receipts attributable to the gross~~
12 ~~receipts tax shall be adjusted for the full cost of retail~~
13 ~~food tax credits issued pursuant to the Gross Receipts and~~
14 ~~Compensating Tax Act for receipts of retail food stores from~~
15 ~~the sale of food."~~

16 Section 4. ~~Section 7-1-6.16 NMSA 1978 (being Laws 1983,~~
17 ~~Chapter 213, Section 27, as amended) is amended to read:~~

18 "~~7-1-6.16. COUNTY EQUALIZATION DISTRIBUTION.--~~

19 A. ~~Beginning on September 15, 1989 and on~~
20 ~~September 15 of each year thereafter, the department shall~~
21 ~~distribute to any county that has imposed or continued in~~
22 ~~effect during the state's preceding fiscal year a county gross~~
23 ~~receipts tax pursuant to Section 7-20E-9 NMSA 1978 an amount~~
24 ~~equal to:~~

25 ~~(1) the product of a fraction, the numerator~~

1 of which is the county's population and the denominator of
2 which is the state's population, multiplied by the annual sum
3 for the county; less

4 (2) the net receipts received by the
5 department during the report year, including any increase or
6 decrease made pursuant to Section 7-1-6.15 NMSA 1978,
7 attributable to the county gross receipts tax at a rate of
8 one-eighth percent; provided that for any month in the report
9 year, if no county gross receipts tax was in effect in the
10 county in the previous month, the net receipts, for the
11 purposes of this section, for that county for that month shall
12 be zero.

13 B. If the amount determined by the calculation in
14 Subsection A of this section is zero or a negative number for
15 a county, no distribution shall be made to that county.

16 C. As used in this section:

17 (1) "annual sum" means for each county the
18 sum of the monthly amounts for those months in the report year
19 that follow a month in which the county had in effect a county
20 gross receipts tax;

21 (2) "monthly amount" means an amount equal
22 to the product of:

23 (a) the net receipts received by the
24 department in the month attributable to the state gross
25 receipts tax plus five and one-eighth percent of the total

1 amount of deductions claimed pursuant to Section 7-9-93 NMSA
2 1978 for the month; and

3 (b) a fraction, the numerator of which
4 is one-eighth percent and the denominator of which is the tax
5 rate imposed by Section 7-9-4 NMSA 1978 in effect on the last
6 day of the previous month;

7 (3) "population" means the most recent
8 official census or estimate determined by the United States
9 census bureau for the unit or, if neither is available, the
10 most current estimated population for the unit provided in
11 writing by the bureau of business and economic research at the
12 university of New Mexico; and

13 (4) "report year" means the twelve-month
14 period ending on the July 31 immediately preceding the date
15 upon which a distribution pursuant to this section is required
16 to be made."

17 Section 5. Section 7-1-6.46 NMSA 1978 (being Laws 2004,
18 Chapter 116, Section 1, as amended) is amended to read:

19 "7-1-6.46. DISTRIBUTION TO MUNICIPALITIES--OFFSET FOR
20 HEALTH CARE PRACTITIONER SERVICES DEDUCTION--DISTRIBUTION IN
21 LIEU OF MUNICIPAL DISTRIBUTION FROM STATE GROSS RECEIPTS TAX--
22 RETAIL FOOD TAX CREDIT DISTRIBUTIONS.--

23 A. For fiscal year 2011, a distribution pursuant
24 to Section 7-1-6.1 NMSA 1978 shall be made to a municipality
25 in an amount, subject to any increase or decrease made

1 ~~pursuant to Section 7-1-6.15 NMSA 1978, equal to the sum of:~~

2 ~~(1) for a municipality having a population~~
3 ~~of less than ten thousand according to the most recent federal~~
4 ~~decennial census and having per capita taxable gross receipts~~
5 ~~for the previous calendar year that are less than the average~~
6 ~~per capita taxable gross receipts for all municipalities for~~
7 ~~that same calendar year:~~

8 ~~(a) the total gross receipts from the~~
9 ~~sale of food on which the retail food tax credit is claimed~~
10 ~~for the month by taxpayers from business locations~~
11 ~~attributable to the municipality multiplied by one and two~~
12 ~~hundred twenty-five thousandths percent; and~~

13 ~~(b) the total deductions claimed~~
14 ~~pursuant to Section 7-9-93 NMSA 1978 for the month by~~
15 ~~taxpayers from business locations attributable to the~~
16 ~~municipality multiplied by the sum of the combined rate of all~~
17 ~~municipal local option gross receipts taxes in effect in the~~
18 ~~municipality for the month plus one and two hundred twenty-~~
19 ~~five thousandths percent; or~~

20 ~~(2) for a municipality not described in~~
21 ~~Paragraph (1) of this subsection:~~

22 ~~(a) the total gross receipts from the~~
23 ~~sale of food on which the retail food tax credit is claimed~~
24 ~~for the month by taxpayers from business locations~~
25 ~~attributable to the municipality multiplied by one and two~~

1 ~~hundred twenty-five thousandths percent; and~~

2 ~~(b) the total deductions claimed~~
3 ~~pursuant to Section 7-9-93 NMSA 1978 for the month by~~
4 ~~taxpayers from business locations attributable to the~~
5 ~~municipality multiplied by the sum of the combined rate of all~~
6 ~~municipal local option gross receipts taxes in effect in the~~
7 ~~municipality on January 1, 2007 plus one and two hundred~~
8 ~~twenty-five thousandths percent.~~

9 ~~B. For fiscal year 2012 and subsequent fiscal~~
10 ~~years, a distribution pursuant to Section 7-1-6.1 NMSA 1978~~
11 ~~shall be made to a municipality in an amount, subject to any~~
12 ~~increase or decrease made pursuant to Section 7-1-6.15 NMSA~~
13 ~~1978, equal to the sum of:~~

14 ~~(1) for a municipality having a population~~
15 ~~of less than ten thousand according to the most recent federal~~
16 ~~decennial census and having per capita taxable gross receipts~~
17 ~~for the previous calendar year that are less than the average~~
18 ~~per capita taxable gross receipts for all municipalities for~~
19 ~~that same calendar year:~~

20 ~~(a) the total gross receipts from the~~
21 ~~sale of food on which the retail food tax credit is claimed~~
22 ~~for the month by taxpayers from business locations~~
23 ~~attributable to the municipality multiplied by one and five-~~
24 ~~hundredths percent; and~~

25 ~~(b) the total deductions claimed~~

1 ~~pursuant to Section 7-9-93 NMSA 1978 for the month by~~
2 ~~taxpayers from business locations attributable to the~~
3 ~~municipality multiplied by the sum of the combined rate of all~~
4 ~~municipal local option gross receipts taxes in effect in the~~
5 ~~municipality for the month plus one and two hundred~~
6 ~~twenty-five thousandths percent; or~~

7 ~~(2) for a municipality not described in~~
8 ~~Paragraph (1) of this subsection:~~

9 ~~(a) the total gross receipts from the~~
10 ~~sale of food on which the retail food tax credit is claimed~~
11 ~~for the month by taxpayers from business locations~~
12 ~~attributable to the municipality multiplied by one and five-~~
13 ~~hundredths percent; and~~

14 ~~(b) the total deductions claimed~~
15 ~~pursuant to Section 7-9-93 NMSA 1978 for the month by~~
16 ~~taxpayers from business locations attributable to the~~
17 ~~municipality multiplied by the sum of the combined rate of all~~
18 ~~municipal local option gross receipts taxes in effect in the~~
19 ~~municipality on January 1, 2007 plus one and two hundred~~
20 ~~twenty-five thousandths percent.~~

21 ~~C. The distribution pursuant to Subsection A of~~
22 ~~this section is in lieu of revenue that would have been~~
23 ~~received by the municipality but for the retail food tax~~
24 ~~credit and the deduction provided by Section 7-9-93 NMSA 1978.~~
25 ~~The distribution shall be considered gross receipts tax~~

1 ~~revenue and shall be used by the municipality in the same~~
2 ~~manner as gross receipts tax revenue, including payment of~~
3 ~~gross receipts tax revenue bonds.~~

4 ~~D. If the reduction made by this 2010 act to the~~
5 ~~distribution made pursuant to Subsection B of this section~~
6 ~~impairs the ability of a municipality to meet its principal or~~
7 ~~interest payment obligations for revenue bonds outstanding~~
8 ~~prior to July 1, 2010 that are secured by the pledge of all or~~
9 ~~part of the municipality's revenue from the distribution made~~
10 ~~pursuant to this section, then the amount distributed pursuant~~
11 ~~to this section to that municipality shall be increased by an~~
12 ~~amount sufficient to meet any required payment; provided that~~
13 ~~the total amount distributed to that municipality pursuant to~~
14 ~~this section does not exceed the amount that would have been~~
15 ~~due that municipality pursuant to this section as it was in~~
16 ~~effect on June 30, 2010.~~

17 ~~E. For the purposes of this section, "business~~
18 ~~locations attributable to the municipality" means business~~
19 ~~locations:~~

20 ~~(1) within the municipality;~~

21 ~~(2) on land owned by the state, commonly~~
22 ~~known as the "state fairgrounds", within the exterior~~
23 ~~boundaries of the municipality;~~

24 ~~(3) outside the boundaries of the~~
25 ~~municipality on land owned by the municipality; and~~

1 ~~(4) on an Indian reservation or pueblo grant~~
2 ~~in an area that is contiguous to the municipality and in which~~
3 ~~the municipality performs services pursuant to a contract~~
4 ~~between the municipality and the Indian tribe or Indian pueblo~~
5 ~~if:~~

6 ~~(a) the contract describes an area in~~
7 ~~which the municipality is required to perform services and~~
8 ~~requires the municipality to perform services that are~~
9 ~~substantially the same as the services the municipality~~
10 ~~performs for itself; and~~

11 ~~(b) the governing body of the~~
12 ~~municipality has submitted a copy of the contract to the~~
13 ~~secretary.~~

14 ~~F. A distribution pursuant to this section may be~~
15 ~~adjusted for a distribution made to a tax increment~~
16 ~~development district with respect to a portion of a gross~~
17 ~~receipts tax increment dedicated by a municipality pursuant to~~
18 ~~the Tax Increment for Development Act."~~

19 ~~Section 6. Section 7-1-6.47 NMSA 1978 (being Laws 2004,~~
20 ~~Chapter 116, Section 2, as amended) is amended to read:~~

21 ~~"7-1-6.47. DISTRIBUTION TO COUNTIES--OFFSET FOR HEALTH~~
22 ~~CARE PRACTITIONER SERVICES DEDUCTION.--~~

23 ~~A. A distribution pursuant to Section 7-1-6.1 NMSA~~
24 ~~1978 shall be made to a county in an amount, subject to any~~
25 ~~increase or decrease made pursuant to Section 7-1-6.15 NMSA~~

1 ~~1978, equal to the sum of:~~

2 ~~(1) for a county having a population of less~~
3 ~~than forty-eight thousand according to the most recent federal~~
4 ~~decennial census:~~

5 ~~(a) the total deductions claimed~~
6 ~~pursuant to Section 7-9-93 NMSA 1978 for the month by~~
7 ~~taxpayers from business locations within a municipality in the~~
8 ~~county multiplied by the combined rate of all county local~~
9 ~~option gross receipts taxes in effect for the month that are~~
10 ~~imposed throughout the county; and~~

11 ~~(b) the total deductions claimed~~
12 ~~pursuant to Section 7-9-93 NMSA 1978 for the month by~~
13 ~~taxpayers from business locations in the county but not within~~
14 ~~a municipality multiplied by the combined rate of all county~~
15 ~~local option gross receipts taxes in effect for the month that~~
16 ~~are imposed in the county area not within a municipality; or~~

17 ~~(2) for a county not described in Paragraph~~
18 ~~(1) of this subsection:~~

19 ~~(a) the total deductions claimed~~
20 ~~pursuant to Section 7-9-93 NMSA 1978 for the month by~~
21 ~~taxpayers from business locations within a municipality in the~~
22 ~~county multiplied by the combined rate of all county local~~
23 ~~option gross receipts taxes in effect on January 1, 2007 that~~
24 ~~are imposed throughout the county; and~~

25 ~~(b) the total deductions claimed~~

1 ~~pursuant to Section 7-9-93 NMSA 1978 for the month by~~
2 ~~taxpayers from business locations in the county but not within~~
3 ~~a municipality multiplied by the combined rate of all county~~
4 ~~local option gross receipts taxes in effect on January 1, 2007~~
5 ~~that are imposed in the county area not within a municipality.~~

6 ~~B. The distribution pursuant to Subsection A of~~
7 ~~this section is in lieu of revenue that would have been~~
8 ~~received by the county but for the deductions provided by~~
9 ~~Section 7-9-93 NMSA 1978. The distribution shall be~~
10 ~~considered gross receipts tax revenue and shall be used by the~~
11 ~~county in the same manner as gross receipts tax revenue,~~
12 ~~including payment of gross receipts tax revenue bonds.~~

13 ~~C. A distribution pursuant to this section may be~~
14 ~~adjusted for a distribution made to a tax increment~~
15 ~~development district with respect to a portion of a gross~~
16 ~~receipts tax increment dedicated by a county pursuant to the~~
17 ~~Tax Increment for Development Act."~~

18 Section 7. Section 7-2-2 NMSA 1978 (being Laws 1986,
19 Chapter 20, Section 26, as amended) is amended to read:

20 "7-2-2. DEFINITIONS.--For the purpose of the Income Tax
21 Act and unless the context requires otherwise:

22 A. "adjusted gross income" means adjusted gross
23 income as defined in Section 62 of the Internal Revenue Code,
24 as that section may be amended or renumbered;

25 B. "base income":

1 (1) means, for estates and trusts, that part
2 of the estate's or trust's income defined as taxable income
3 and upon which the federal income tax is calculated in the
4 Internal Revenue Code for income tax purposes plus, for
5 taxable years beginning on or after January 1, 1991, the
6 amount of the net operating loss deduction allowed by Section
7 172(a) of the Internal Revenue Code, as that section may be
8 amended or renumbered, and taken by the taxpayer for that
9 year;

10 (2) means, for taxpayers other than estates
11 or trusts, that part of the taxpayer's income defined as
12 adjusted gross income plus, for taxable years beginning on or
13 after January 1, 1991, the amount of the net operating loss
14 deduction allowed by Section 172(a) of the Internal Revenue
15 Code, as that section may be amended or renumbered, and taken
16 by the taxpayer for that year;

17 (3) includes, for all taxpayers, any other
18 income of the taxpayer not included in adjusted gross income
19 but upon which a federal tax is calculated pursuant to the
20 Internal Revenue Code for income tax purposes, except amounts
21 for which a calculation of tax is made pursuant to Section 55
22 of the Internal Revenue Code, as that section may be amended
23 or renumbered; "base income" also includes interest received
24 on a state or local bond; and

25 (4) includes, for all taxpayers, an amount

1 deducted pursuant to Section 7-2-32 NMSA 1978 in a prior
2 taxable year if:

3 (a) such amount is transferred to
4 another qualified tuition program, as defined in Section 529
5 of the Internal Revenue Code, not authorized in the Education
6 Trust Act; or

7 (b) a distribution or refund is made
8 for any reason other than: 1) to pay for qualified higher
9 education expenses, as defined pursuant to Section 529 of the
10 Internal Revenue Code; or 2) upon the beneficiary's death,
11 disability or receipt of a scholarship;

12 C. "compensation" means wages, salaries,
13 commissions and any other form of remuneration paid to
14 employees for personal services;

15 D. "department" means the taxation and revenue
16 department, the secretary or any employee of the department
17 exercising authority lawfully delegated to that employee by
18 the secretary;

19 E. "fiduciary" means a guardian, trustee,
20 executor, administrator, committee, conservator, receiver,
21 individual or corporation acting in any fiduciary capacity;

22 F. "filing status" means "married filing joint
23 returns", "married filing separate returns", "head of
24 household", "surviving spouse" and "single", as those terms
25 are generally defined for federal tax purposes;

1 G. "fiscal year" means any accounting period of
2 twelve months ending on the last day of any month other than
3 December;

4 H. "head of household" means "head of household"
5 as generally defined for federal income tax purposes;

6 I. "individual" means a natural person, an estate,
7 a trust or a fiduciary acting for a natural person, trust or
8 estate;

9 J. "Internal Revenue Code" means the United States
10 Internal Revenue Code of 1986, as amended;

11 K. "lump-sum amount" means for the purpose of
12 determining liability for federal income tax, an amount that
13 was not included in adjusted gross income but upon which the
14 five-year-averaging or the ten-year-averaging method of tax
15 computation provided in Section 402 of the Internal Revenue
16 Code, as that section may be amended or renumbered, was
17 applied;

18 L. "modified gross income" means all income of the
19 taxpayer and, if any, the taxpayer's spouse and dependents,
20 undiminished by losses and from whatever source, including:

- 21 (1) compensation;
- 22 (2) net profit from business;
- 23 (3) gains from dealings in property;
- 24 (4) interest;
- 25 (5) net rents;

- 1 (6) royalties;
2 (7) dividends;
3 (8) alimony and separate maintenance
4 payments;
5 (9) annuities;
6 (10) income from life insurance and
7 endowment contracts;
8 (11) pensions;
9 (12) discharge of indebtedness;
10 (13) distributive share of partnership
11 income;
12 (14) income in respect of a decedent;
13 (15) income from an interest in an estate or
14 a trust;
15 (16) social security benefits;
16 (17) unemployment compensation benefits;
17 (18) workers' compensation benefits;
18 (19) public assistance and welfare benefits;
19 (20) cost-of-living allowances; and
20 (21) gifts;

21 M. "modified gross income" excludes:

- 22 (1) payments for hospital, dental, medical
23 or drug expenses to or on behalf of the taxpayer;
24 (2) the value of room and board provided by
25 federal, state or local governments or by private individuals

1 or agencies based upon financial need and not as a form of
2 compensation;

3 (3) payments pursuant to a federal, state or
4 local government program directly or indirectly to a third
5 party on behalf of the taxpayer when identified to a
6 particular use or invoice by the payer; or

7 (4) payments for credits and rebates
8 pursuant to the Income Tax Act and made for a credit pursuant
9 to Section 7-3-9 NMSA 1978;

10 N. "net income" means, for estates and trusts,
11 base income adjusted to exclude amounts that the state is
12 prohibited from taxing because of the laws or constitution of
13 this state or the United States and means, for taxpayers other
14 than estates or trusts, base income adjusted to exclude:

15 (1) an amount equal to the standard
16 deduction allowed the taxpayer for the taxpayer's taxable year
17 by Section 63 of the Internal Revenue Code, as that section
18 may be amended or renumbered;

19 (2) an amount equal to the itemized
20 deductions defined in Section 63 of the Internal Revenue Code,
21 as that section may be amended or renumbered, allowed the
22 taxpayer for the taxpayer's taxable year less the amount
23 excluded pursuant to Paragraph (1) of this subsection and less
24 the amount of state and local income and sales taxes included
25 in the taxpayer's itemized deductions;

1 (3) an amount equal to the product of the
2 exemption amount allowed for the taxpayer's taxable year by
3 Section 151 of the Internal Revenue Code, as that section may
4 be amended or renumbered, multiplied by the number of personal
5 exemptions allowed for federal income tax purposes;

6 (4) income from obligations of the United
7 States of America less expenses incurred to earn that income;

8 (5) other amounts that the state is
9 prohibited from taxing because of the laws or constitution of
10 this state or the United States;

11 (6) for taxable years that began prior to
12 January 1, 1991, an amount equal to the sum of:

13 (a) net operating loss carryback
14 deductions to that year from taxable years beginning prior to
15 January 1, 1991 claimed and allowed, as provided by the
16 Internal Revenue Code; and

17 (b) net operating loss carryover
18 deductions to that year claimed and allowed;

19 (7) for taxable years beginning on or after
20 January 1, 1991, an amount equal to the sum of any net
21 operating loss carryover deductions to that year claimed and
22 allowed, provided that the amount of any net operating loss
23 carryover from a taxable year beginning on or after January 1,
24 1991 may be excluded only as follows:

25 (a) in the case of a timely filed

1 return, in the taxable year immediately following the taxable
2 year for which the return is filed; or

3 (b) in the case of amended returns or
4 original returns not timely filed, in the first taxable year
5 beginning after the date on which the return or amended return
6 establishing the net operating loss is filed; and

7 (c) in either case, if the net
8 operating loss carryover exceeds the amount of net income
9 exclusive of the net operating loss carryover for the taxable
10 year to which the exclusion first applies, in the next four
11 succeeding taxable years in turn until the net operating loss
12 carryover is exhausted; in no event shall a net operating loss
13 carryover be excluded in any taxable year after the fourth
14 taxable year beginning after the taxable year to which the
15 exclusion first applies; and

16 (8) for taxable years beginning on or after
17 January 1, 2011, an amount equal to the amount included in
18 adjusted gross income that represents a refund of state and
19 local income and sales taxes that were deducted for federal
20 tax purposes in taxable years beginning on or after January 1,
21 2010;

22 O. "net operating loss" means any net operating
23 loss, as defined by Section 172(c) of the Internal Revenue
24 Code, as that section may be amended or renumbered, for a
25 taxable year as further increased by the income, if any, from

1 obligations of the United States for that year less related
2 expenses;

3 P. "net operating loss carryover" means the
4 amount, or any portion of the amount, of a net operating loss
5 for any taxable year that, pursuant to Paragraph (6) or (7) of
6 Subsection N of this section, may be excluded from base
7 income;

8 Q. "nonresident" means every individual not a
9 resident of this state;

10 R. "person" means any individual, estate, trust,
11 receiver, cooperative association, club, corporation, company,
12 firm, partnership, limited liability company, joint venture,
13 syndicate or other association; "person" also means, to the
14 extent permitted by law, any federal, state or other
15 governmental unit or subdivision or agency, department or
16 instrumentality thereof;

17 S. "resident" means an individual who is domiciled
18 in this state during any part of the taxable year or an
19 individual who is physically present in this state for one
20 hundred eighty-five days or more during the taxable year; but
21 any individual, other than someone who was physically present
22 in the state for one hundred eighty-five days or more during
23 the taxable year, who, on or before the last day of the
24 taxable year, changed the individual's place of abode to a
25 place without this state with the bona fide intention of

1 continuing actually to abide permanently without this state is
2 not a resident for the purposes of the Income Tax Act for
3 periods after that change of abode;

4 T. "secretary" means the secretary of taxation and
5 revenue or the secretary's delegate;

6 U. "state" means any state of the United States,
7 the District of Columbia, the commonwealth of Puerto Rico, any
8 territory or possession of the United States or any political
9 subdivision of a foreign country;

10 V. "state or local bond" means a bond issued by a
11 state other than New Mexico or by a local government other
12 than one of New Mexico's political subdivisions, the interest
13 from which is excluded from income for federal income tax
14 purposes under Section 103 of the Internal Revenue Code, as
15 that section may be amended or renumbered;

16 W. "surviving spouse" means "surviving spouse" as
17 generally defined for federal income tax purposes;

18 X. "taxable income" means net income less any
19 lump-sum amount;

20 Y. "taxable year" means the calendar year or
21 fiscal year upon the basis of which the net income is computed
22 under the Income Tax Act and includes, in the case of the
23 return made for a fractional part of a year under the
24 provisions of the Income Tax Act, the period for which the
25 return is made; and

1 Z. "taxpayer" means any individual subject to the
2 tax imposed by the Income Tax Act."

3 ~~Section 8. Section 7-2-14 NMSA 1978 (being Laws 1972,
4 Chapter 20, Section 2, as amended) is amended to read:~~

5 ~~"7-2-14. LOW-INCOME COMPREHENSIVE TAX REBATE.--~~

6 ~~A. Except as otherwise provided in Subsection B of
7 this section, any resident who files an individual New Mexico
8 income tax return and who is not a dependent of another
9 individual may claim a tax rebate for a portion of state and
10 local taxes to which the resident has been subject during the
11 taxable year for which the return is filed. The tax rebate
12 may be claimed even though the resident has no income taxable
13 under the Income Tax Act. A husband and wife who file
14 separate returns for a taxable year in which they could have
15 filed a joint return may each claim only one-half of the tax
16 rebate that would have been allowed on a joint return.~~

17 ~~B. No claim for the tax rebate provided in this
18 section shall be filed by a resident who was an inmate of a
19 public institution for more than six months during the taxable
20 year for which the tax rebate could be claimed or who was not
21 physically present in New Mexico for at least six months
22 during the taxable year for which the tax rebate could be
23 claimed.~~

24 ~~C. For the purposes of this section, the total
25 number of exemptions for which a tax rebate may be claimed or~~

~~1 allowed is determined by adding the number of federal
 2 exemptions allowable for federal income tax purposes for each
 3 individual included in the return who is domiciled in New
 4 Mexico plus two additional exemptions for each individual
 5 domiciled in New Mexico included in the return who is sixty-
 6 five years of age or older plus one additional exemption for
 7 each individual domiciled in New Mexico included in the return
 8 who, for federal income tax purposes, is blind plus one
 9 exemption for each minor child or stepchild of the resident
 10 who would be a dependent for federal income tax purposes if
 11 the public assistance contributing to the support of the child
 12 or stepchild was considered to have been contributed by the
 13 resident.~~

~~14 D. The tax rebate provided for in this section may
 15 be claimed in the amount shown in the following table:~~

Modified gross		And the total number						
income is:		of exemptions is:						
But Not		6 or						
Over	Over	1	2	3	4	5	More	
\$ 0	\$ 1,000	\$ 145	\$ 210	\$ 270	\$ 335	\$ 380	\$ 455	
1,001	2,000	145	210	270	335	380	490	
2,001	3,000	145	210	270	335	385	490	
3,001	4,000	145	210	270	335	385	490	
4,001	5,000	145	210	270	335	385	490	
5,001	6,000	125	190	250	320	385	490	

1	6,001	7,000	100	145	190	245	305	410
2	7,001	8,000	90	130	165	205	255	335
3	8,001	9,000	80	120	155	195	225	280
4	9,001	10,000	75	110	135	170	205	245
5	10,001	11,000	70	95	120	155	185	225
6	11,001	12,000	65	85	110	135	165	200
7	12,001	13,000	60	80	105	125	145	180
8	13,001	14,000	60	80	105	125	145	180
9	14,001	15,000	55	75	95	115	135	160
10	15,001	16,000	50	75	90	110	125	150
11	16,001	17,000	45	70	85	105	115	145
12	17,001	18,000	40	60	80	95	110	135
13	18,001	19,000	35	50	70	85	100	120
14	19,001	20,000	30	45	60	75	90	105
15	20,001	21,000	25	40	50	65	80	95
16	21,001	22,000	20	35	45	60	70	85
17	22,001	23,000	10	30	40	50	60	70
18	23,001	24,000	10	20	30	40	50	60.

19 E. ~~If a taxpayer's modified gross income is~~
20 ~~zero, the taxpayer may claim a credit in the amount shown in~~
21 ~~the first row of the table appropriate for the taxpayer's~~
22 ~~number of exemptions.~~

23 F. ~~The tax rebates provided for in this~~
24 ~~section may be deducted from the taxpayer's New Mexico income~~
25 ~~tax liability for the taxable year. If the tax rebates exceed~~

1 ~~the taxpayer's income tax liability, the excess shall be~~
2 ~~refunded to the taxpayer.~~

3 ~~G. For purposes of this section, "dependent"~~
4 ~~means "dependent" as defined by Section 152 of the Internal~~
5 ~~Revenue Code of 1986, as that section may be amended or~~
6 ~~renumbered, but also includes any minor child or stepchild of~~
7 ~~the resident who would be a dependent for federal income tax~~
8 ~~purposes if the public assistance contributing to the support~~
9 ~~of the child or stepchild was considered to have been~~
10 ~~contributed by the resident."~~

11 Section 9. Section 7-9-4 NMSA 1978 (being Laws 1966,
12 Chapter 47, Section 4, as amended) is amended to read:

13 "7-9-4. IMPOSITION AND RATE OF TAX--DENOMINATION AS
14 "GROSS RECEIPTS TAX".--

15 A. For the privilege of engaging in business,
16 an excise tax equal to five and one-eighth percent of gross
17 receipts is imposed on any person engaging in business in New
18 Mexico.

19 B. The tax imposed by this section shall be
20 referred to as the "gross receipts tax".

21 Section 10. Section 7-9-7 NMSA 1978 (being Laws 1966,
22 Chapter 47, Section 7, as amended) is amended to read:

23 "7-9-7. IMPOSITION AND RATE OF TAX--DENOMINATION AS
24 "COMPENSATING TAX".--

25 A. For the privilege of using tangible

1 property in New Mexico, there is imposed on the person using
2 the property an excise tax equal to five and one-eighth
3 percent of the value of tangible property that was:

4 (1) manufactured by the person using
5 the property in the state;

6 (2) acquired as the result of a
7 transaction with a person located outside this state that
8 would have been subject to the gross receipts tax had the
9 tangible personal property been acquired from a person with
10 nexus with New Mexico; or

11 (3) acquired as the result of a
12 transaction that was not initially subject to the compensating
13 tax imposed by Paragraph (2) of this subsection or the gross
14 receipts tax but which transaction, because of the buyer's
15 subsequent use of the property, should have been subject to
16 the compensating tax imposed by Paragraph (2) of this
17 subsection or the gross receipts tax.

18 B. For the purpose of Subsection A of this
19 section, value of tangible property shall be the adjusted
20 basis of the property for federal income tax purposes
21 determined as of the time of acquisition or introduction into
22 this state or of conversion to use, whichever is later. If no
23 adjusted basis for federal income tax purposes is established
24 for the property, a reasonable value of the property shall be
25 used.

1 C. For the privilege of using services
2 rendered in New Mexico, there is imposed on the person using
3 such services an excise tax equal to five percent of the value
4 of the services at the time they were rendered. The services,
5 to be taxable under this subsection, must have been rendered
6 as the result of a transaction that was not initially subject
7 to the gross receipts tax but which transaction, because of
8 the buyer's subsequent use of the services, should have been
9 subject to the gross receipts tax.

10 D. The tax imposed by this section shall be
11 referred to as the "compensating tax".

12 ~~Section 11. A new section of the Gross Receipts and~~
13 ~~Compensating Tax Act is enacted to read:~~

14 ~~"RETAIL FOOD TAX CREDIT--RECEIPTS OF RETAIL FOOD~~
15 ~~STORES.--~~

16 ~~A. A retail food store that is a taxpayer may~~
17 ~~claim a credit for each reporting period against the~~
18 ~~taxpayer's gross receipts tax due for that reporting period in~~
19 ~~an amount equal to five and one-eighth percent of the~~
20 ~~taxpayer's gross receipts for that reporting period that are~~
21 ~~from the sale of food and are not exempt from gross receipts~~
22 ~~taxation and are not deductible pursuant to another provision~~
23 ~~of the Gross Receipts and Compensating Tax Act.~~

24 ~~B. The credit that may be claimed by a~~
25 ~~taxpayer pursuant to this section may be referred to as the~~

1 ~~"retail food tax credit".~~

2 ~~C. The retail food tax credit shall be~~
3 ~~reported separately from any other credits claimed in the same~~
4 ~~reporting period by the taxpayer against the taxpayer's gross~~
5 ~~receipts tax liability.~~

6 ~~D. A retail food store claiming the credit~~
7 ~~provided by this section shall, on all sales of food with~~
8 ~~respect to which the credit will be claimed, adjust the amount~~
9 ~~of gross receipts tax passed on to the purchaser of the food~~
10 ~~to reflect the full value of the credit.~~

11 ~~E. For the purposes of this section:~~

12 ~~(1) "food" means any food or food~~
13 ~~product for home consumption that meets the definition of food~~
14 ~~in 7 USCA 2012(k)(1) for purposes of the federal supplemental~~
15 ~~nutrition assistance program; and~~

16 ~~(2) "retail food store" means an~~
17 ~~establishment that sells food for home preparation and~~
18 ~~consumption and that meets the definition of retail food store~~
19 ~~in 7 USCA 2012(p)(1) for purposes of the federal supplemental~~
20 ~~nutrition assistance program, whether or not the establishment~~
21 ~~participates in the supplemental nutrition assistance~~
22 ~~program."~~

23 Section 12. TEMPORARY PROVISION.--For the 2010 taxable
24 year, a taxpayer is deemed to have complied with the
25 provisions of Section 7-2-12.2 NMSA 1978 if the taxpayer has

1 made the required annual payments of estimated taxes due for
2 taxable year 2010 based on the definition of net income in
3 Section 7-2-2 NMSA 1978 applicable prior to January 1, 2010.

4 ~~Section 13. REPEAL.--Section 7-9-92 NMSA 1978 (being~~
5 ~~Laws 2004, Chapter 116, Section 5) is repealed.~~

6 Section 14. APPLICABILITY.--

7 ~~A. The distribution adjustment made pursuant~~
8 ~~to Section 3 of this act applies to retail food tax credits~~
9 ~~claimed pursuant to Section 11 of this act against gross~~
10 ~~receipts received on or after July 1, 2010.~~

11 ~~B. The distributions pursuant to Sections 5~~
12 ~~and 6 of this act apply to deductions for health care~~
13 ~~practitioner services taken from the gross receipts tax that~~
14 ~~are attributable to gross receipts received on or after July~~
15 ~~1, 2010 and to retail food tax credits claimed pursuant to~~
16 ~~Section 11 of this act against gross receipts received on or~~
17 ~~after July 1, 2010.~~

18 ~~C. The provisions of Sections 7 and 8 of this~~
19 ~~act apply to taxable years beginning on or after January 1,~~
20 ~~2010.~~

21 Section 15. EFFECTIVE DATE.--The effective date of the
22 provisions of this act is July 1, 2010. _____

23
24
25